

## **REMARKS**

Previously Claims 92-94, 96-99, 101-112 and 124-137 were pending. In the instant amendment, Claims 92, 97, 101-112 and 136 have been amended. Upon entry of the instant amendment, Claims 92-94, 96-99, 101-112 and 124-137 will be pending and under consideration.

The Patent Office acknowledges that Claims 92-94, 96-99, 101 and 124-137 contain allowable subject matter with respect to the nucleic acid of SEQ ID NO:3 and nucleic acid sequence encoding a polypeptide sequence of SEQ ID NO:4.

### **I. AMENDMENTS TO THE CLAIMS**

Claims 92, 97, and 102-112 have been amended to conform to elected subject matter in Applicants' Response to Restriction/Election Requirement dated April 30, 2001, without prejudice to Applicants' right to pursue non-elected subject in one or more related applications.

Support for the amendments to Claims 102-112 can be found in the specification, for example, at page 6, lines 3-9, page 47, lines 5-6, lines 15-18, and from line 19 of page 47 to line 29 of page 49, and Claims 46, 48, 50, 52, 54, 56, 58, 60, 62, 64, and 66 as originally filed.

Claim 136 has been amended to recite, in relevant part, "a VERO cell." Support for amended Claim 136 is found in the specification, for example, at page 49, lines 9-10.

The amendments to the claims do not introduce any new matter and are fully supported by the instant specification and the claims as originally filed. Entry and consideration of the amendments is respectfully requested.

No amendment fee is believed to be due.

### **II. PRIORITY**

Applicants respectfully maintain that the instant application is a continuation of prior application no. 08/834,497, filed April 4, 1997, now U.S. Patent No. 6,140,305, which is a continuation-in-part of each of application no. 08/630,912 filed April 4, 1996, now abandoned, application no. 08/632,673, filed April 16, 1996, now U.S. Patent No. 5,712,098, and application no. 08/652,265, filed May 23, 1996, now U.S. Patent No. 6,025,130.

### **III. REJECTION OF CLAIM 136 UNDER 35 U.S.C. § 112, FIRST PARAGRAPH**

Claim 136 stands rejected under 35 U.S.C. § 112, first paragraph, allegedly for lack of written description (the Patent Office refers to this rejection as a new matter rejection). The Patent Office alleges that the specification does not provide support for “monkey cell.” The Patent Office acknowledges that the specification provides support for VERO cell line, the source of which is the kidney of the African Green Monkey (Office Action, page 4, first paragraph). Moreover, it is Applicants’ understanding that the Patent Office does not dispute a primate cell as recited in Claim 135 generally includes monkey cells. Hence, without acquiescing to the propriety of the rejection, Claim 136 has been amended to recite, in relevant part, a VERO cell. Applicants respectfully submit that the rejection of Claim 136 is obviated in view of this amendment.

Accordingly, Applicants respectfully request that the rejection of Claim 136 under 35 U.S.C. § 112, first paragraph, be withdrawn.

### **IV. REJECTION OF CLAIMS 102-112 UNDER 35 U.S.C. § 112, FIRST PARAGRAPH**

Claims 102-112 stand rejected under 35 U.S.C. § 112, first paragraph, for alleged lack of written description. The Patent Office alleges that because the claims are drawn to a plasmid “comprising” a recited coding sequence, that the recited coding sequence may be embedded within a larger sequence or may contain additional sequences despite the fact that the claims recite that the coding sequence “consists” of at least a certain number of consecutive residues from defined regions of SEQ ID NO:3. The instant amendment to Claim 102 recites a coding sequence “flanked on each end by a noncoding sequence,” wherein the coding sequence consists of the specified sequences and “wherein the flanking noncoding sequences are a promoter, a control sequence, a restriction site, or a terminator sequence.” It is respectfully submitted that the amendment to Claim 102 obviates the rejection of Claim 102 and Claims 103-112 that depend from Claim 102.

Accordingly, Applicants respectfully request that the rejection of Claims 102-112 under 35 U.S.C. § 112, first paragraph, be withdrawn.

**V. CLAIM REJECTION UNDER 35 U.S.C. § 102**

Claims 102-112 stand rejected under 35 U.S.C. § 102(b), allegedly as being anticipated by Hillier *et al.* (Genbank Accession Number R12707, April 1995). The Patent Office alleges that nucleotides 335-316 of Hillier *et al.* is 100% identical to nucleotides 876-895 of SEQ ID NO:3. Applicants respectfully submit that the rejection is obviated in view of the amendments to Claim 102-112. Accordingly, Applicants respectfully request that the rejection of Claims 102-112 under 35 U.S.C. § 102(b) be withdrawn.

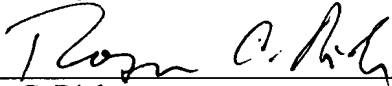
**CONCLUSION**

In light of the above amendments and remarks, Applicants respectfully request that the Patent Office reconsider this application with a view towards allowance. Applicants submit that Claims 92-94, 96-99, 101-112 and 124-137 satisfy all of the criteria for patentability and are in condition for allowance.

No fees, other than those for an extension of time, are believed to be due in connection with this Amendment and Response. However, the Commissioner is authorized to charge any required fee(s) to Jones Day Deposit Account No. 503013 (order no. 043018-999087).

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Respectfully submitted,

  
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